

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

JAMES R. GIBBS, JR.

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:08CV601-LG-RHW

U.S. POSTAL SERVICE

DEFENDANT

PROPOSED FINDINGS OF FACT AND RECOMMENDATION

Before the Court is Plaintiff's [2] Motion for Leave to Proceed *in forma pauperis*.

Plaintiff is proceeding *pro se* and filed a complaint alleging gender discrimination by the Defendant United States Postal Service. In his motion and paupers affidavit, Plaintiff indicates that he earns approximately \$1,700 per month working at Denny's Restaurant, and that he receives \$1,579 in retirement income, for a combined monthly income of \$3,279. Plaintiff indicates that the Denny's where he works will be closed for ten days for renovation at some point during the next 12 months, which would affect his income. Plaintiff's spouse is a housewife with no income. Plaintiff has \$388 in savings. Plaintiff owns a house for which he is making a monthly mortgage payment (including real estate taxes) of \$1,016.79. Plaintiff owns two vehicles with a combined estimated value of \$13,000. Plaintiff lists his total monthly expenses at \$2,834. Hence, his monthly income exceeds expenses by \$445.

The undersigned has reviewed Plaintiff's motion and affidavit and finds that his income exceeds his expenses. The undersigned further finds that Plaintiff is not a pauper as contemplated by 28 U.S.C. § 1915.

RECOMMENDATION

Based on the foregoing, the undersigned recommends that the [2] Motion to Proceed *in forma pauperis* be denied.

NOTICE OF RIGHT TO APPEAL/OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to this Recommendation must serve and file written objections within ten (10) days after being served a copy of the Recommendation, serve and file with the Clerk of the Court his written objections to the Recommendation, with a copy to the District Judge, the U.S. Magistrate Judge, and the opposing party. A party filing objections must specifically identify those findings, conclusions, and recommendations to which objections are being made; the District Court need not consider frivolous, conclusive, or general objections. A party's failure to file objections to the proposed findings, conclusions, and recommendation contained in this report shall bar that party from a *de novo* determination by the District Court. Additionally, a party's failure to file written objections to the proposed findings, conclusions, and recommendation contained in this report within ten (10) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

SO ORDERED, this the 22nd day of October, 2008.

sl Robert H. Walker
UNITED STATES MAGISTRATE JUDGE